(2)

No. 85-701.

In the
Supreme Court of the United States.

OCTOBER TERM, 1985.

FEDERAL ELECTION COMMISSION,
APPELLANT,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC.,
APPELLEE.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Motion to Affirm.

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November 27, 1985

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Questions Presented.[1]

Whether the Court of Appeals correctly held that § 441b is unconstitutional as applied to a nonprofit ideological corporation making indirect uncoordinated expenditures to express its views on candidates?

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[1] If the Court determines that this case is not appropriate for summary affirmance and sets it down for oral argument, MCFL intends to raise and brief the following additional statutory and constitutional issues:

1. Whether 2 U.S.C. § 441b prohibits the independent uncoordinated expenditures made by MCFL since § 441b(b)(2) defines those expenditures which are prohibited and that section only includes expenditures made directly or indirectly to a candidate or campaign committee?

2. Whether § 441b prohibits MCFL's expenditures since it may only constitutionally prohibit "express advocacy" and the MCFL newsletter did not contain any express advocacy? (MCFL disagrees with the Court of Appeals' characterization in its holding that its expenditures were to "express its views on candidates").

3. Whether MCFL's newsletter is exempt from § 441b's prohibition because it is a newsletter or periodical publication within the meaning of the Federal Election Campaign Act?

4. Whether § 441b abridges MCFL's right to equal protection of the laws because it impermissibly regulates the subject of expression and the identity of the speaker?

5. Whether the phrases "in connection with," "for the purpose of influencing," and "newspaper" contained in § 441b are unconstitutionally vague?

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Appellee Massachusetts Citizens for Life, Inc. ("MCFL"), pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the final judgment and decree of the Court of Appeals for the First Circuit be affirmed on the grounds that the questions are so insubstantial as not to warrant further argument.

Statement of the Case.

This is an appeal from the final judgment and decree entered on July 31, 1985, by the Court of Appeals for the First Circuit, finding 2 U.S.C. § 441b, which prohibits corporations and labor unions from making contributions and expenditures in connection with a federal election, unconstitutional as applied to a nonprofit ideological corporation making independent uncoordinated expenditures to publish its views on candidates (A. 24a).

MCFL is an ideological, grass roots, nonpartisan corporation organized to foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political, and other forms of activity (A. 3a). It was incorporated in 1973 as a nonprofit, nonstock corporation under Massachusetts law (A. 3a, 26a). Since its incorporation, MCFL has engaged in a wide variety of activities designed to foster respect for human life and defend the right to life, including educational activities and drafting of legislation on pro-life issues.[2] MCFL uses various methods of raising funds, such as bake sales and dances, to support its activities. MCFL does not accept contributions from business corporations.

The primary avenue of communication among MCFL and its members[3] is the MCFL newsletter. From the outset, MCFL and its members have recognized the necessity of building a strong base to achieve their goals; the newsletter is the primary vehicle in that effort. The first edition of the newsletter was published in the month that MCFL was incorporated. There-

[2] This fact and a number of others cited herein are derived from the record in the Court of Appeals which has not yet been transmitted to this Court.

[3] The word "members" as used herein is not limited to "members" as that word is used in the Federal Election Campaign Act and defined by this Court in *Federal Election Commission* v. *National Right To Work Committee*, 459 U.S. 197 (1982).

after, the newsletter has been distributed fairly regularly, subject only to the availability of funds (A. 32a).

The expense of the newsletter, which is prepared primarily by MCFL members, is paid for by MCFL. The newsletter is typically 6 to 10 pages in length and is devoted to current news concerning abortion and other pro-life issues (A. 33a). It also contains information on MCFL activities and appeals for volunteers and contributions. *Id.* Material on political, administrative, judicial and legislative developments is also included. *Id.* These reports are usually coupled with appeals urging MCFL members to write or call the decision-makers and voice their support of the pro-life position.

In periods prior to elections, MCFL regularly printed "Special Election Editions" of the MCFL newspaper. Three such editions were printed before September, 1978. In September, 1978, MCFL published and distributed two editions of its newsletter, a Special Election Edition and a complimentary partial Special Election Edition, to inform its members of the position on pro-life issues of candidates in an upcoming primary election (A. 26a-27a).

The Special Election Edition referred to 50 candidates for federal office and 442 candidates for state office. It accurately reported the position of *every* candidate on three central pro-life issues.[4] The positions of the incumbents were determined by roll call votes; the positions of the nonincumbents by responses to MCFL questionnaires (A. 27a). The publication was an educational service for concerned voters; it did not endorse any particular candidate. The newsletter states that the "[MCFL]

[4] MCFL is just one of a number of nonpartisan organizations, including Public Citizen, The United Church of Christ, the American Civil Liberties Union ("ACLU") and the John Birch Society, which disseminate voting records. A § 441b prohibition of these publications, which constitute traditional nonpartisan speech, would chill the activities of such organizations.

election survey is an educational service to help you cast an informed vote when you go to the polls. . . ."

Shortly thereafter, MCFL printed and distributed a complimentary partial "Special Election Edition" of the MCFL newsletter for the sole purpose of correcting minor errors in the earlier full edition's reporting of the voting records of Congressmen Tsongas, Studds and Drinan. *Id.*

No arrangements were made with any candidates, campaign workers or political committees to coordinate or prearrange the preparation of the newsletter (A. 30a-31a). Both editions specifically state that "[t]his special election edition does not represent an endorsement of any particular candidate." (A. 27a.) The total cost of preparing, printing and distributing both editions was $9,812.00. *Id.* This cost was entirely borne by MCFL. No candidate, political or campaign committee, and no corporation contributed any money towards any of the costs of preparing, printing or distributing the Special Election Editions.

On March 4, 1982, the Federal Election Commission ("FEC") instituted an action under the Federal Election Campaign Act of 1971 ("FECA" or the "Act"), as amended, 2 U.S.C. §§ 431 *et seq.*, alleging that in publishing and distributing the newsletters, MCFL violated 2 U.S.C. § 441b which prohibits corporations from making contributions or expenditures to a candidate in connection with a federal election.

The district court below, on cross motions for summary judgment, entered judgment for MCFL (A. 25a-38a). It found that MCFL's publication of the Special Election Editions was not an expenditure under § 441b because it was not an indirect payment to any candidate, and, on independent grounds, because it did not expressly advocate the election or defeat of any candidate (A. 30a-31a). The court further held that the newsletter met the newspaper exception (A. 31a-34a). Finally, the court held in the alternative, that if § 441b applied to

MCFL's activities, it was an unconstitutional abridgement of MCFL's rights to freedom of speech, press and association (A. 38a). The Court of Appeals for the First Circuit upheld the district court's decision solely on the grounds that the statute was unconstitutional as applied to a nonprofit ideological corporation making indirect, uncoordinated expenditures to express its views of candidates (A. 19a-24a).

On August 22, 1985, the FEC filed its Notice of Appeal of that decision, pursuant to 28 U.S.C. §§ 1252 and 2101(a).

Argument.

THE COURT OF APPEALS CORRECTLY HELD THAT § 441b IS UNCONSTITUTIONAL AS APPLIED TO A NONPROFIT IDEOLOGICAL CORPORATION MAKING INDEPENDENT EXPENDITURES.

The decisions of this Court point to the inescapable conclusion that if indeed MCFL's expenditures are prohibited by § 441b, that section is unconstitutional as applied to a nonprofit ideological corporation making independent expenditures to publish truthful voting records and positions of candidates on a public issue.[5] Thus, the Court of Appeals decision should be affirmed without further briefing or argument in this Court.

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[5] Since *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978), a number of commentators have concluded that to the extent that § 441b is construed to prohibit independent expenditures by any corporation, it is unconstitutional. *See, e.g.*, Bolton, *Constitutional Limitations on Restricting Corporate and Union Political Speech*, 22 Ariz. L. Rev. 373 (1981); Nicholson, *The Constitutionality of Federal Restrictions on Corporate and Union Campaign Contributions and Expenditures*, 65 Cornell L. Rev. 945 (1980); Birnbaum, *The Constitutionality of the Federal Corrupt Practices Act After First National Bank of Boston v. Bellotti*, 28 Am. U.L. Rev. 149 (1979); *First National Bank of Boston v. Bellotti-Money Talks: Constitutional Protection of*

A review of this Court's election law cases establishes certain fundamental propositions and provides a framework for analyzing § 441b. No discussion of the interface of election law and the First Amendment could be undertaken without reference to the landmark case of *Buckley* v. *Valeo*, 424 U.S. 1 (1976). *Buckley* was a challenge to certain of the contribution and expenditure limits contained in the Federal Election Campaign Act of 1971, as amended in 1974. This Court held that only the governmental interest in preventing corruption may sustain contribution or expenditure limitations, both of which restrict First Amendment guarantees of freedom of speech and association. *Id.* at 26. Also, independent expenditures, however large and however effective, enjoy a highly protected status because they have at most a tenuous potential for causing corruption. *Id.* at 22-23. Therefore, no limit on individual independent expenditures was allowable under *Buckley*.

Two years after *Buckley*, the Court struck down a state criminal statute which prevented banks and business corporations from spending money to publicize their views in opposition to a referendum issue in *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978). In *Bellotti*, the Court held that the corporate status of the speaker does not deprive speech of its protection under the First Amendment. Even several of the dissenting justices in *Bellotti* indicated that where the corporation is the nonprofit outgrowth of individuals having joined together to advocate their common views, the corporate status of the speaker, far from *depriving* speech of an otherwise protected status, if anything *increases* the degree of protection to be accorded because the corporation enhances and secures

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Corporate Speech, 8 Cap. U.L. Rev. 575 (1979); Note, *Corporate Free Speech: First National Bank of Boston v. Bellotti*, 20 B.C.L. Rev. 1003 (1979); *First National Bank v. Bellotti: The Constitutionality of Government Restrictions on Political Spending by Corporations*, 16 Hous. L. Rev. 195, 208 (1978).

the rights of its individual constituents. *Id.* at 805 (White, J., dissenting, Brennan, J. and Marshall, J., joining).

In *Federal Election Commission* v. *National Right To Work Committee* (NRWC), 459 U.S. 197 (1982), the Court held only that a provision of the Federal Election Campaign Act dealing with the prohibition of corporate campaign contributions to political candidates did not violate the First Amendment. NRWC had challenged the limitation imposed on a nonstock corporation restricting solicitation of contributions for a segregated fund set up for the particular purpose of contributing to candidates solely to members of the corporation. The limitation on solicitation was upheld because of the constitutional validity of legislative regulation of corporate contributions to candidates for public office. *Id.* at 208-210. Neither solicitation nor contributions are at issue here.

Finally, just this year, the Court rendered its opinion in *Federal Election Commission* v. *National Conservative Political Action Committee* (NCPAC), 53 U.S.L.W. 4293 (U.S., March 18, 1985). In *NCPAC*, limits on independent expenditures by an incorporated political action committee were held to violate the First Amendment. The Court reaffirmed the conclusion in *Buckley* that independent expenditures have no potential for a corrupting influence since "the absence of prearrangement and coordination undermines the value of the expenditure to the candidate, and thereby alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 4298.

In sum, these decisions establish certain fundamental propositions: (i) only the governmental interest in preventing corruption or the appearance of corruption may sustain contribution or expenditure limitations, both of which restrict fundamental First Amendment guarantees of freedom of speech and association; (ii) independent expenditures, however large and however effective, enjoy a highly protected status because they

have no or, at most, a tenuous potential for causing corruption; (iii) the corporate status of the speaker does not deprive speech of its protection under the First Amendment and; (iv) where the corporation is the outgrowth of individuals having joined together to advocate their common views, the corporate status of the speaker increases the degree of protection to be accorded because the corporation enhances and secures the associational and speech rights of its individual constituents.

Against this backdrop of decisions the First Circuit rendered its opinion in this case. The principles of those cases compel its affirmance.

A. *If § 441b is Interpreted to Prohibit the Publication and Distribution of MCFL's Newspaper, It Impinges on the Right of MCFL and its Members to Freedom of Speech, Press and Association.*

It is beyond cavil that § 441b impinges on First Amendment rights. The section intrudes upon MCFL's and its members' freedom of speech by prohibiting MCFL from publishing a newsletter giving voters accurate, nonpartisan information on the stance of candidates for office on an issue of importance to its members.* Discussion of public issues and political campaigns is at the heart of the American Constitution and the First Amendment. *See Buckley* v. *Valeo*, 424 U.S. 1, 48, 52-53 (1976). Section 441b is an impermissible content-based regula-

* Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.

Buckley v. *Valeo*, 519 F.2d 821, 875 (D.C. Cir. 1975) (en banc) (per curiam), *aff'd in part, rev'd in part*, 424 U.S. 1 (1976) (per curiam).

tion. As the Court of Appeals noted, "it is the political *content* which runs afoul of the statute (emphasis in original)." (A. 20a.) Moreover, prohibiting MCFL from publishing its newsletter violates the guaranty of freedom of the press, a guaranty which is not limited to traditional newspapers. *Branzburg* v. *Hayes*, 408 U.S. 665, 704-705 (1972), citing, *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938).

MCFL's and its members' associational rights are also violated by such a prohibition. This Court has recognized "freedom of association" as one of the rights derived from the First Amendment's guarantees of speech, press, petition and assembly. L. Tribe, *American Constitutional Law*, § 12-23 at 702 (1978). The right of association is most sacrosanct where a group or its members are engaging in the advancement of beliefs and ideas, however controversial. *See, e.g., Widmar* v. *Vincent*, 454 U.S. 263 (1981). The government cannot interfere with an activity integral to an association in such a way that the association's protected purposes would be significantly frustrated were the activity disallowed. *See, e.g., Healy* v. *James*, 408 U.S. 169 (1972). MCFL's newsletter is such an integral activity. Expenditure limits particularly impinge on associational rights because any limitation on independent expenditures "precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association." *Buckley* v. *Valeo*, 424 U.S. at 22 (citations omitted). Such limitations impinge on associational rights because they strike at the very reason that individuals have joined together. Since limits on expenditures have been found to violate an organization's associational rights, *see, e.g., FEC* v. *NCPAC*, 53 U.S.L.W. at 4297, clearly, the *total prohibition* upon any expenditure by MCFL simply because it has chosen to associate in a corporate form undercuts its and its members' right of association.

The FEC argues that § 441b does not restrict political speech because MCFL could have published its newsletter, as long as it financed the activity through a separate segregated fund. Jurisdictional Statement, p. 10. This disingenuous statement is rebutted by the FEC's own argument in the district court below. The FEC, citing *FEC* v. *NRWC*, argued that it was entitled to summary judgment because MCFL had distributed the newsletter beyond its membership since, being a non-membership corporation, it had no members as that term is defined in the Federal Election Campaign Act. Accepting the FEC's contentions at face value, MCFL would have been permitted to set up a separate segregated fund, but would have been prohibited from soliciting any contributions to the fund.[7] *See FEC* v. *NRWC*, 459 U.S. at 205-206. The Court in *Buckley* stated:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. *The distribution of the humblest handbill or leaflet entails printing, paper and circulation costs.*

Buckley v. *Valeo*, 424 U.S. at 19 (emphasis added) (footnote omitted.) That comment is particularly apt in this case. Obviously, § 441b does restrict political speech by MCFL, in addition to restricting MCFL's press and associational rights.

[7] To paraphrase the Court's comment in *Buckley*, 424 U.S. at 19 n.18, being free to engage in unlimited political expression while subject to the FEC's restrictions is like being free to drive an automobile as far and as often as one desires on an empty gas tank.

Moreover, requiring an ideological corporation to use a separate segregated fund, more commonly referred to as a Political Action Committee ("PAC"), to carry out its political advocacy presents particular problems and may chill the corporation's speech.[8] That route is unavailable to nonstock corporations which lack members, as that term is used in FECA. Further, FECA imposes burdensome procedural, administrative and recordkeeping requirements on PACs, *see* 11 C.F.R. Part 114, which an ideological corporation with limited funds may find too difficult or expensive to undertake and so, instead, may choose not to bother. Additionally, FECA requires PAC's to disclose the names of contributors. 2 U.S.C. § 434(b)(2). As the Court of Appeals found, in an area of sensitive First Amendment rights, mere disclosure may be sufficient to deter political activities. *Federal Election Commission* v. *Hall-Tyner Election Campaign Committee*, 678 F.2d 416, 420 (1982), *cert. denied*, 459 U.S. 1145 (1983). A majority of the population disagrees with the stand taken by MCFL (A. 31a). If so, contributors might well be slow to contribute if their names would be disclosed.

B. *Section 441b Does Not Serve a Sufficiently Compelling State Interest to Justify the Substantial Restriction on the First Amendment Rights of MCFL and its Members.*

A number of related factors lead to the inescapable conclusion that § 441b does not serve a sufficiently compelling state

[8] The FEC makes some point of the fact that MCFL later established a separate segregated fund. MCFL objected below, in its reply brief, to any reference to this under Fed. R. Evid. 407. The district court, entering judgment for defendant, did not rule on this question and MCFL insists again that reference to the fact is improper and irrelevant. In any event, the segregated fund was only created after the *in terrorem* effect of enforcement proceedings by the FEC and was possible only after MCFL's articles of organization and bylaws had been amended to create membership categories. Thus, the organization creating the PAC was a different type of corporation than the one sued by the FEC.

interest to justify the substantial restriction on the First Amendment rights of MCFL. Truly independent expenditures have scant potential for corrupting elected representatives. Moreover, if the danger of corruption exists at all, in the case, for example, of multi-million dollar, multi-national conglomerates, it does not exist in the case of grass roots, nonpartisan, nonprofit, issue-oriented corporations such as MCFL, where the independent expenditures sought to be proscribed are minimal and went toward the publication and dissemination of accurate voting records and candidates' positions on issues of concern to a large number of voters.

Buckley and its progeny establish that the only governmental interest which the government may properly invoke to justify regulation of campaign expenditures or contributions is the interest in minimizing corruption or the appearance of corruption. *Buckley* v. *Valeo*, 424 U.S. at 47. The "corruption" to be avoided arises when "[e]lected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *FEC* v. *NCPAC*, 53 U.S.L.W. at 4298. The FEC claims that because of MCFL's corporate structure, its independent expenditures have the potential to be corrupting; "[b]ut precisely what the 'corruption' may consist of we are never told with assurance." *Id.*

The fact that MCFL's expenditures were independent since the newsletter was created and distributed without the cooperation, consultation, request or suggestion of any candidate, "alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley* v. *Valeo*, 424 U.S. at 47. Additionally, since the editions accurately displayed the positions on specific public issues of all candidates, there was no likelihood of the creation of political debts. *First National Bank of Boston* v. *Bellotti*, 435 U.S. at 788.

Even assuming *arguendo* there is a potential for a corrupting influence from large independent expenditures by business corporations, that danger simply does not exist in the context of minimal expenditures by grass roots, nonpartisan, nonprofit, ideological organizations such as MCFL. MCFL did not have access to vast sums. Even if some ideological corporations could raise substantial sums, the expenditure of such sums would not distort the political process. Moneys spent by MCFL are moneys given or raised by individuals who believe in and advocate the cause espoused by MCFL. The candidate will be no more indebted to the organization, MCFL, than to the elements of his constituency whose interests are voiced by that organization. *Cf., e.g., Common Cause* v. *Schmitt*, 512 F. Supp. 489, 498 (D.D.C. 1980), *aff'd*, 455 U.S. 129 (1982). Thus, even if the possibility exists that MCFL's independent expenditures would influence the representative decision-maker, there is no possibility that they would *improperly* influence him.

MCFL was engaging in direct political speech, "not the solicitation of contributions from 267,000 individuals as in *FEC* v. *NRWC*," 459 U.S. 197, "nor 'speech by proxy'," *California Medical Association* v. *Federal Election Commission*, 453 U.S. 182, 196 n.16 (1981). (A. 37a.) The district court below stated:

> the defendant's special election editions were the very antithesis of a corrupting agreement or contribution. They were open, strived for accuracy, reported on every candidate regardless of prospects of election and urged readers to vote on election day. They sought to influence incumbents and candidates solely by means of informed voter reaction to the candidates' positions on an important public issue. Far from being an improper influence, or eroding public confidence in the electoral process, or threatening

its integrity, *FEC v. NRWC, supra* at 207-208, they would seem to promote rather than undermine the honest functioning of representative government.

(A. 37a.)

Additionally, as was pointed out in *Buckley*, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive." *Buckley* v. *Valeo*, 424 U.S. at 47. Since a majority of the population does not agree with MCFL's anti-abortion stance, "[t]o the extent [the newsletter] was distributed beyond defendant's membership, it probably lessened rather than enhanced the prospect of election of candidates subscribing to defendants' [*sic*] platform. . ." (A. 31a.)[9]

In view of the fact that MCFL's expenditures could in no way lead to real or apparent corruption, the Court of Appeals correctly concluded that the necessary element to uphold the application of the prohibition was missing.

The second reason the FEC advances as supporting the prohibition of MCFL's political speech is protection for con-

[9] Note, contrary to the FEC's argument, *FEC* v. *NRWC*, 459 U.S. 197, does not govern this case. The Court of Appeals rejected such an argument stating,

> the instant case, unlike *National Right to Work Committee*, involves a corporation's indirect and uncoordinated expenditures in connection with a federal election, not a solicitation for direct contributions to candidates. *See Federal Election Commission* v. *National Conservative Political Action Committee*, 53 U.S.L.W. 4293, 4296 (U.S. March 18, 1985). ('NRWC is consistent with this Court's earlier holding that a corporation's expenditures to propagate its views on issues of general public interest are of a different constitutional stature than corporate contributions to candidates.').

(A. 23a.)

tributors to MCFL from having their contributions "used to support political candidates to whom they may be opposed." Jurisdictional Statement at 17-18.[10] This concern is not relevant in the present case. As the Court of Appeals stressed,

> contributors to MCFL need not be protected from having their money used for expenditures such as the Special Election Edition. Individuals who contribute to MCFL do so because they support MCFL's anti-abortion position and presumably would favor expenditure for a publication that informs contributors and others of the position of various candidates on the abortion issue.

(A. 22a-23a.)

The government's concern that MCFL's publication of the Special Election Edition may go against the desires of some of its contributors to vote on the basis of party loyalty or to vote for non-supporters of pro-life issues is misplaced. MCFL merely provides an informational service. In fact, MCFL began publishing the Special Election Editions, in part, because of requests from its members. With the information MCFL provides, MCFL members can decide to vote for candidates on whatever criteria they choose. MCFL members may utilize the information to vote solely for pro-life candidates or, if they choose, they can vote for candidates based on their positions

[10] Once again, the FEC makes the specious argument that "[i]f all of MCFL's contributors were willing to support its political expenditures, as the court believes, MCFL would have no more trouble obtaining contributions to its separate segregated fund than to its corporate treasury." Jurisdictional Statement at 19. Since MCFL could not have solicited contributions to such a fund, as previously discussed, it would have been impossible for it to finance the preparation, printing and distribution of the Special Election Editions.

on other issues or party affiliation. Without MCFL's publication, its members are *less informed*. If anything, MCFL's publication of candidates' positions on pro-life issues guarantees its members "the opportunity to make a personal decision about the political options he or she will support." Jurisdictional Statement at 18 (citations omitted).

Another interest which the government raises in support of a prohibition on independent expenditures is public disclosure of sources of federal campaign financing. MCFL remains subject to the same disclosure provisions which govern other advocacy organizations which are not political committees. *See, e.g.*, 2 U.S.C. § 434(c).

Grasping at a final straw, the FEC argues that business corporations will be able to evade § 441b merely by contributing to ideological corporations. First, that argument is inapplicable because MCFL accepted no corporate contributions. In any event, the FEC's argument is extremely puzzling. Since § 441b continues, under the FEC's construction of the statute, to prohibit corporate business contributions and expenditures "in connection with any election," contributions by business corporations to ideological corporations to enable the ideological corporations to make expenditures in connection with an election undoubtedly would be deemed by the FEC to violate that provision. And, in the final analysis, if it is constitutional for the government to prohibit business corporations from making independent expenditures, a point which MCFL does not concede, there are certainly other, more narrowly tailored methods of preventing such expenditures which do not trample on the First Amendment rights of nonprofit ideological corporations.

In conclusion, § 441b fails to afford the "breathing space" which First Amendment freedoms need to survive. *See NAACP* v. *Button*, 371 U.S. 415, 433 (1963). It is a sad commentary that even now, in the last two decades of the twentieth century,

an ideological organization must struggle with the government of the United States to be able to truthfully publish the positions of candidates for public office on a controversial public issue. MCFL urges this Court to summarily affirm the Court of Appeals' decision and cut short this assault on First Amendment freedoms.

Conclusion.

Based on the foregoing arguments and authorities, the appellee MCFL respectfully requests this Court to affirm the decision of the Court of Appeals without further briefing and argument.

Respectfully submitted,

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